

## § 226.60

## 22 CFR Ch. II (4–1–11 Edition)

annually, from the date of the submission of the quarterly or annual financial report, as authorized by USAID. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by USAID, the 3-year retention requirements is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph 226.53(g).

(c) Copies of original records may be substituted for the original records if authorized by USAID.

(d) USAID shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, USAID may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) USAID, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, USAID will not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when USAID can demonstrate that such records shall be kept confidential and would have been

exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to USAID.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

### SUSPENSION, TERMINATION AND ENFORCEMENT

#### § 226.60 Purpose of suspension, termination and enforcement.

Sections 226.61 and 226.62 set forth uniform suspension, termination and enforcement procedures.

#### § 226.61 Suspension and termination.

(a) Awards may be terminated (or, with respect to paragraphs (a) (1) and (3) of this section, suspended) in whole or in part if any of the circumstances stated in paragraphs (a)(1) through (4) of this section apply.

(1) By USAID, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By USAID with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate the award in whole or in part and prohibit the recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is effected and the situation causing the suspension continues for 60 days or more, then USAID may terminate the award in whole or in part on written notice to the recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

(4) By the recipient upon sending to USAID written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if USAID determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the grant was made, it may terminate the award in its entirety under paragraph (a)(1), (a)(2) or (a)(3) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph 226.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

#### § 226.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, USAID may, in addition to imposing any of the special conditions outlined in § 226.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by USAID.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* The recipient may appeal, in accordance with Subpart F, any action taken by USAID on which a dispute exists and a decision by the Agreement Officer has been obtained. There is no right to a hearing on such an appeal.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless USAID expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable, and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and USAID's implementing regulations (see 22 CFR part 208).